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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3704 OF 2006

Bhaskar Desai .. Applicant
Versus
State of Maharashtra .. Respondent

Mr.Kirti Parekh i/b. H.E.Palve for applicant
Ms.M.M.Deshmukh, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 18th October 2006

P.C.

. The applicant is arrested on 20th July 2006. It appears that Dy.S.P. Mrs.Karandikar is the original complainant. The F.I.R. has been registered with Wada Police station. They have been investigated by Vasai police station. The allegations against applicant as also others are that they have committed offences punishable under section 3 (i), (ii), 3(2) and 3(4) of the

Maharashtra Control of Organised Crimes Act (for short MCOCA) 1999. On 18th July 2006, the applicant applied for bail in the Court of Special Judge (MCOCA), Thane. Bail application No. 1200 of 2006 filed by Rajesh Gatalia and Application No.1313 of 2006 preferred by the applicant herein were heard together and the learned Judge has proceeded to pass a common order rejecting the same.

2. Learned Advocate appearing for applicant invites my attention to the order of the learned Judge and more particularly paras 7 and 10 thereof. In his submission, the offence of "organised crime" as defined under M.C.O.C.A. postulates "continuing unlawful activity" which in turn is defined in section 2(d) thereof. For an unlawful activity to be continuing in nature, the Legislature has provided that the same must culminate into a cognisable offence punishable with imprisonment of three years or more, undertaken either singly or jointly as a member

of organised crime syndicate or as a member of such syndicate and in respect of which more than one charge sheets have been filed before the competent court within the preceding period of 10 years and that the court has taken cognisance of such offences. In his submission when the learned Judge has taken on record the report of I.O. and has observed that it is evident from a perusal thereof that no charge sheet has been filed against the accused, although number of C.Rs. have been registered at various police stations, then, the activity cannot be said to be "continuing unlawful activity" so as to come within the definition of the said term as also the term "organised crime". Consequently, the MCOCA itself was inapplicable and such being the case, applicant was entitled to be enlarged on bail.

3. The I.O. is present in court today. Ms.Deshmukh, learned A.P.P. appearing for prosecution, upon taking instructions from the

I.O. submits that the report filed in the trial court and referred to in para 7 of the impugned order, indicates that no charge sheet has been filed against the applicant.

4. Paras 7 and 10 of the impugned order read thus:-

> "7. It has been argued on behalf of the applicants that the above three mentioned C.Rs. in which the applicants had been arrested, had not as yet resulted into filing of charge sheets, therefore, the said unlawful activities would not be covered under the definition of "continuing unlawful activities" as is defined in Section 2(d) of the M.C.O.C. Act. For the said activities to be covered under section 2(d) of the Act, it is necessary that more than one charge sheet ought to be filed against the accused within preceding period of 10

years. As not a single charge sheet has been filed against the applicants, therefore, the prosecution case would not be covered under the definition in Section 2(d) of the M.C.O.C. Act. Upon perusal of the report of the investigating officer, it is evident that it is not the prosecution case that any charge sheet has been filed against the acused, although number of C.Rs. have been registered against the applicants at various police stations."

"10. So far as the arguments on behalf of the applicants are concerned that the M.C.O.C. Act is not applicable, it will be premature to arrive at any conclusion regarding the applicability of the M.C.O.C. Act because the investigation is still at primary stage. Unless and until the charge sheet is filed, it will not be correct to come to any conclusion

whether the M.C.O.C.Act is applicable or not. The bail applications therefore stand rejected. Hence, the following order:-

> The applications of applicant Rajesh Pranlal Ghatalia and applicant Bhaskar Shantilal Desai are rejected."

5. Upon perusal of definition of the terms "continuing lawful activity", "organised crime", "organised crime syndicate", it is apparent that the application of the applicant could not have been rejected on the touch stone of section 21(4) of the MCOC Act. Once, the Public Prosecutor opposing the application fails to place the necessary material and the court is not satisfied that there are reasonable grounds for believing that the Applicant is guilty of offences or likely to commit any offence while on bail, the applicant deserves to be enlarged on bail. In

other words, the satisfaction must be that there are reasonable grounds for believing that the applicant before the court is not guilty of such offences. In the light of the fact that no charge sheet has been filed and only C.Rs. registered, which fact is undisputed, also before me, then, in my view, learned Judge was in clear error in rejecting the application. The MCOCA cannot be applied in the absence of the above pre-requisites being satisfied. Its inapplicability, prima facie, being not disputed the bail application could not have been rejected.

6. Applicant, therefore, deserves to be enlarged on bail. However, it is clarified that this order does not prevent the prosecution from invoking provisions of MCOC Act at a later stage and applying them to the accused and, thereafter, proceeding in accordance with law.

7. Neither passing of this order nor the

applicant being enlarged on bail pursuant thereto, would in any manner prevent authorities from acting in accordance with law. Hence, following order:-

i) The applicant arrested in connection with C.R.No.14 of 2003 registered with Wada Police Station and investigated by Vasai police station shall be enlarged in the sum of Rs.25,000/- with one or two local sureties in the like amount.

ii) The bail is granted subject to condition that the applicant will remain present before the concerned investigating officer (Additional S.P.) Vasai Police Station once a fortnight conclusion of the trial.

iii) The order of bail will be given effect only after the applicant furnishes

to the investigating officer the details about his place of residence and address where he proposes to stay after he is enlarged on bail. The applicant will not change his residential address thereafter till the conclusion of trial without prior intimation to the Investigating officer.

iv) The bail is granted subject to condition that the applicant shall not directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

v) The applicant shall cooperate with the learned Trial Judge for expeditious disposal of the case. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail. In addition, the prosecution can

move for cancellation of bail upon MCOCA being applied to the applicant.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) Application is disposed of in above terms.

viii) Parties to act on an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)